

ANNEX H
CONTRACTUAL TERMS AND CONDITIONS
QUALITY ASSURANCE SAMPLE AGREEMENT
RFP 09-002

1. Term. This Agreement is effective [EFFECTIVE DATE WILL BE LISTED], and will continue through project completion (date).

2. Documents incorporated by reference.

2.1 Incorporation of Bid Proposal Documents. The IRHTP RFP 08-001 and the Vendor's bid proposal in response to this RFP, together with any clarifications, attachments, appendices, amendments or other writings of the IRHTP or the Vendor (collectively bid proposal) are incorporated into this Agreement by this reference as if fully set forth in this Agreement.

2.2 Contractual Obligations of Vendor. The terms and conditions of the bid proposal and of the RFP are made contractual obligations of the Vendor.

2.3 Contents of Agreement. The parties acknowledge that this Agreement consists of this document as well as the RFP and the bid proposal and that the parties are obligated to perform as set forth in the RFP and the bid proposal to the same extent that they are obligated to perform the specific duties set forth in this document.

2.3.1 Order of Preference. In the case of any inconsistency or conflict between the specific provisions of this document, the RFP or the bid proposal, any inconsistency or conflict shall be resolved as follows:

2.3.2 First, by giving preference to the specific provisions of this Agreement.

2.3.3 Second, by giving preference to the specific provisions of the RFP.

2.3.4 Third, by giving preference to the specific provisions of the bid proposal.

2.4 Intent of References to Bid Documents. The references to the parties' obligations, which are contained in this document, are intended to change, supplement or clarify the obligations as stated in the RFP and the bid proposal. The failure of the parties to make reference to the terms of the RFP or bid proposal in this document shall not be construed as creating a conflict and will not relieve the Vendor of the contractual obligations imposed by the terms of the RFP and the bid proposal. Terms offered in the bid proposal, which exceed the requirements of the RFP, shall not be construed as creating an inconsistency or conflict with the RFP or this document. The contractual obligations of the IRHTP cannot be implied from the bid proposal.

3. Definitions. The following words shall have the meanings set forth below. Words in the singular shall be held to include the plural and vice versa, and words of gender shall be held to include the other gender as the context requires. For the purposes of this Contract, the following terms and all other terms defined in this Contract shall have the meanings so defined unless the context clearly indicates otherwise.

"IHA" shall mean the Iowa Hospital Association

"IRHTP" shall mean the Iowa Rural Health Telecommunications Program

"Vendor" shall mean [Vendor will be listed].

4. Scope of Work.

4.1 Scope of Work. The fiber optic cable facility to be constructed pursuant to and as a result of this Agreement by the Vendor is described and attached hereto as Schedule A and made a part hereof by this reference.

4.2 Specifications The Vendor shall prepare and deliver specifications to the IRHTP which will detail the design, technical and functional capabilities, look and feel, and other attributes related to the project, all as more fully described in Schedule A.

4.3 Amendments to Scope of Services and Specifications. The parties agree that Schedule A, Scope of Services, and the specifications, may be revised, replaced, amended or deleted at any time during the term of this Agreement to reflect changes in service or performance standards upon the mutual written consent of the parties.

4.4 Industry Standards. Services rendered pursuant to this Agreement shall be performed in a professional and workmanlike manner in accordance with the terms of this Contract and with generally acceptable industry standards of performance for similar tasks and projects. In the absence of a detailed specification for the performance of any portion of this Agreement the parties agree that the applicable specification shall be the generally accepted industry standard. As long as the IRHTP notifies Vendor promptly of any services performed in violation of this standard, Vendor will re-perform the services, at no cost to IRHTP, such that the services are rendered in the above-specified manner.

4.5 Non-Exclusive Rights. This Agreement is not exclusive. The IRHTP reserves the right to select other Vendors to provide services similar or identical to the Scope of Services described in this Agreement during the term of this Agreement.

5. Compensation.

5.1 Payment Terms – Progress Payments

5.1.1 USAC and IRHTP will disburse funds based on monthly submissions (*i.e.*, invoices) of actual incurred eligible expenses, and will respond to vendor invoices in accordance with its current bi-monthly invoicing payment plan. This invoice process will permit disbursement of funds to ensure that the selected Participants' network projects proceed, while allowing USAC and the FCC to monitor expenditures in order to ensure compliance with the program and prevent waste, fraud, and abuse.

5.1.2 Upon award of contract for a link-segment, the Vendor will assist the IRHTP project coordinator in the development of a USAC Network Cost Worksheet. (NCW) This work sheet will list the primary tasks to be completed for each link-segment. When specific line items are completed on each NCW, the Vendor may submit it for a progress payment. As soon as the line item completion is approved by the IRHTP project coordinator the vendor will be paid 15% of the line item amount by the specific HCP served by the link-segment. The Vendor will acknowledge receipt of the 15% payment and forward appropriate forms to USAC for payment of the remaining 85%. USAC will honor requests for payment twice each month.

The invoices when submitted must certify by signature that all construction specifications were met during the covered period on the specified segment and show the contract number and project/site number on each invoice. If the IRHTP disputes the amount of any

invoice, the IRHTP will notify the Vendor of the dispute within 10 days of receipt of the invoice. IRHTP may withhold payment of the disputed amount until the dispute is resolved

5.2 Delay of Payment Due To Vendor's Failure. If the IRHTP in good faith determines that the Vendor has failed to perform or deliver any service or product as required by this Contract, the Vendor shall not be entitled to any compensation under this Contract until such service or product is completed or delivered. In the event of partial performance, the IRHTP may withhold that portion of the Vendor's compensation, which represents payment for the unsatisfactory services.

5.3 Audit The IRHTP shall audit the invoices presented to the IRHTP to ensure that they are proper, current and correct. The Vendor has 30 days from the date of invoice to present and resolve any discrepancies with the IRHTP. The IRHTP shall notify the Vendor of any and all discrepancies that the audit(s) reveals.

6. Insurance.

- 6.1 Coverage Requirements.** The Vendor, and any subcontractors performing the services required under this Agreement, shall maintain in full force and effect, with insurance companies of recognized responsibility, at its own expense, insurance covering its work during the entire term of this Agreement and any extensions or renewals thereof. The insurance shall be of the type and in the amounts as reasonably required by the IRHTP. The Vendor's insurance shall, among other things, insure against any loss or damage resulting from or related to the Vendor's performance of this Agreement. All such insurance policies should remain in full force and effect for the entire life of this Agreement and shall not be canceled or changed except with the advance written approval of the IRHTP.
- 6.2 Types of Coverage.** Unless otherwise requested by the IRHTP, Vendor shall, at its sole cost, cause to be issued and maintained during the entire term of this Agreement (and any extensions or renewals thereof) the insurance coverage's set forth below, each naming the State of Iowa and the IRHTP additional insured or loss payees, as applicable:

| <i>Type</i> | <i>Amount</i> |
|--|-------------------------|
| Workers Compensation And Employer Liability | As Required By Iowa Law |
| General Liability (including contractual liability) written on an occurrence basis | TBD |
| General Aggregate | \$3 million |
| Product Liability | \$1 million |
| Personal Injury | \$1 million |
| Comprehensive Aggregate | \$1 million |

| | |
|---|-------------|
| Each Occurrence | \$1 million |
| Automobile Liability, including any auto, hired autos and non owned autos COMBINED SINGLE LIMIT | \$1 million |

6.3 Coverage for HCP Property on ICN Controlled Premises. The policies shall provide coverage for damages to the HCP's property, or on premises under the control of the ICN and/or the State of Iowa.

- 6.5 Claims Made Coverage.** All insurance policies required by this Agreement must provide coverage for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy.
- 6.5 Notice Regarding Cancellation.** Certificates of insurance, which provide that the IRHTP will be notified at least thirty (30) days prior to cancellation of the coverage required by this Agreement must be provided by the Vendor and any subcontractors to the IRHTP at the time of execution of the Agreement or at a time mutually agreeable to the parties.
- 6.7 No Limitation of Liability.** The receipt of insured certificates by the IRHTP does not constitute approval of the coverage contained in the certificates, and the Vendor remains responsible for determining that its insurance coverage meets each and every requirement of this Agreement. Acceptance of the insurance certificates by the IRHTP shall not act to relieve the Vendor of any obligation under this Agreement. Only companies authorized to transact business in the State of Iowa shall issue the insurance policies and certificates required by this Section. It shall be the responsibility of the Vendor to keep the respective insurance policies and coverages current and in force during the life of this Agreement.
- 6.7 Warranty.** The Vendor warrants that it has examined its insurance coverage to determine that the State of Iowa and the IRHTP can be named as additional insured without creating an adverse effect on the Vendor's coverage.
- 6.7.1 Waiver of Subrogation Rights.** The Vendor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against State of Iowa and the IRHTP. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the IRHTP.

7. Confidential Information.

- 7.1.** During the course of this Agreement each party may disclose, to the other either directly or indirectly, certain data that is proprietary which shall be referred to as "Confidential Information" of the disclosing party and which must remain confidential. Confidential Information may include without limitation, among other things, such items as security information, user information, data, knowledge, trade secrets and other proprietary information, methodologies, developments, software, software documentation, inventions, processes, and other nonpublic information in oral, graphic, written, electronic or machine readable form.
- 7.2.** During the course of this Agreement each party may disclose, to the other either directly or indirectly, certain data that is proprietary which shall be referred to as "Confidential

Information" of the disclosing party and which must remain confidential. Confidential Information may include without limitation, among other things, such items as security information, user information, data, knowledge, trade secrets and other proprietary information, methodologies, developments, software, software documentation, inventions, processes, and other nonpublic information in oral, graphic, written, electronic or machine readable form.

7.2.1. All written or electronic Confidential Information shall be clearly marked as Confidential Information by the party providing the Confidential Information at the time of disclosure to the other party.

7.2.2. If the Confidential Information is disclosed orally, and reduced to writing, the receiving party must treat the information as Confidential Information.

7.2.3. The Vendor shall limit such identification to information it reasonably believes it is entitled to confidential treatment pursuant to FCC, USAC or other applicable law.

7.3. The obligations of this Agreement do not apply to Confidential Information which:

7.3.1. Was rightfully in the possession of the receiving party from a source other than the disclosing party prior to the time of disclosure of the Confidential Information to receiving party.

7.3.2. Was known to the receiving party prior to the disclosure of the Confidential Information from the disclosing party;

7.3.3. Was disclosed to the receiving party without restriction by an independent third party having a legal right to disclose the Confidential Information;

7.3.4. Becomes public knowledge, other than through an act or failure to act by the disclosing Party;

7.3.5. Is publicly available or in the public domain when provided;

7.3.6. Is independently developed by the disclosing party; or

7.3.7. Is disclosed pursuant to law, subpoena or the order of a court or government authority.

7.4. The parties shall have the following duties relating to the Confidential Information:

7.4.1. The Vendor shall designate one individual who shall remain the responsible authority in charge of all data collected, used or disseminated by the Vendor in connection with the performance of this Agreement. The Vendor shall accept responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the terms of this Agreement. The private and confidential data shall remain the property of the IRHTP at all times.

7.4.2. The Confidential Information of either party shall be held in strict confidence by the receiving party and shall not be disclosed or used by the receiving party without the prior written consent of the disclosing party, except as provided in this Agreement or as may be required by law pursuant to available confidentiality restrictions.

7.4.3. The parties shall use their best efforts to protect the Confidential Information in its possession.

- 7.4.4. The parties shall restrict disclosure of the Confidential Information solely to those of its employees, agents, consultants and attorneys with a need to know in order to accomplish the purpose of this Agreement.
- 7.4.5. The parties shall protect the Confidential Information from disclosure to or access by unauthorized persons.
- 7.4.6. The parties shall use the Confidential Information solely for the purpose of this Agreement and for no other purpose.
- 7.4.7. The parties shall not duplicate the Confidential Information in any form, except as may be necessary to accomplish the purpose of this Agreement.
- 7.4.8. The parties shall advise each of its employees, agents, consultants and attorneys who receive the Confidential Information of the obligations of confidentiality and restrictions on the use set forth herein.
- 7.4.9. The parties shall immediately return the Confidential Information and all copies thereof, to each other upon the earlier of the expiration of the need therefore or the termination of this Agreement in order to accomplish the purpose.

7.5. The provisions of this Agreement shall apply to all Confidential Information disclosed by the parties to each other over the course of this Agreement. The parties' obligations under this provision shall survive termination of this Agreement and shall be perpetual.

The Vendor shall indemnify the IRHTP for a violation of this Section. The Vendor shall notify the IRHTP prior to the destruction of these materials and shall provide the IRHTP with the opportunity for proper destruction of these materials.

No Confidential Information will be exported to any country in violation of the United States Export Administration Act and the regulations there under.

8. Vendor Warranties.

8.1 Construction of Warranties Expressed in this Agreement with Warranties Implied by Law. All warranties made by the Vendor in all provisions of this Agreement and the bid proposal by the Vendor, whether or not this Agreement specifically denominates the Vendor's promise as a warranty or whether the warranty is created only by the Vendor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the IRHTP, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Vendor.

8.2 The Vendor warrants that all the concepts, materials produced, the work product and the information, data, designs, processes, inventions, techniques, devices, and other such intellectual property furnished, used, or relied upon by the Vendor or the IRHTP will not infringe any copyright, patent, trademark, trade dress, or other intellectual property right of the Vendor or others. Any intellectual property provided to the IRHTP pursuant to the terms of this Agreement, shall be wholly original with the Vendor or the Vendor has secured all

applicable interests, rights, licenses, permits, or other intellectual property rights in such concepts, materials and work.

8.3 The Vendor represents and warrants that the concepts, materials and the IRHTP's use of same and the exercise by the IRHTP of the rights granted by this Agreement shall not infringe upon any other work, other than material provided by the IRHTP to the Vendor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity.

8.4 The Vendor warrants that all of the services to be performed hereunder will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.

8.5 The Vendor warrants that the deliverables under this Agreement will operate in conformance with the terms and conditions of this Agreement.

8.6 The Vendor warrants that it has full authority to enter into this Agreement and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber, or interfere with the rights granted to the IRHTP.

8.7 The Vendor warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Vendor pursuant to this Agreement are or will be fully satisfied by the Vendor so that the IRHTP will not have any obligations with respect thereto.

8.8 The Vendor warrants that it is the owner of or otherwise has the right to use and distribute the software, the materials owned by the Vendor and any other materials, and methodologies used in connection with providing the services contemplated by this Agreement.

8.9 The Vendor expressly warrants to the standards in the industry all aspects of the goods and services provided by it or used by the Vendor and the IRHTP in performance of this Agreement.

8.10 The Vendor unconditionally warrants that all equipment supplied and installed for the purpose of fulfilling its obligations under this Agreement are fit for the purpose intended, that it complies with industry standards and that the equipment is compatible with the State's equipment.

9. Indemnification By Vendor. The Vendor agrees to defend, indemnify and hold the IRHTP, and the State of Iowa, its employees, agents, board members, appointed officials and elected officials, harmless from any and all demands, debts liabilities, damages, loss, claims, suits or actions, settlements, judgments, costs and expenses, including the reasonable value of time expended by the Attorney General's Office, and the costs and expenses and attorney fees of other counsel required to defend the IRHTP or the State of Iowa related to or arising from:

9.1 Any violation or breach of this Agreement including, without limitation, any of the Vendor's representations or warranties; or

9.2 Any acts or omissions, including, without limitation, negligent acts or omissions or willful misconduct of Vendor, its officers, employees, agents, board members, contractors, subcontractors, or counsel employed by Vendor in the performance of this Agreement, or any other reason in connection with the goods and services provided under this Agreement; or

9.3 Claims for any violation of any intellectual property right including but not limited to infringement of patents, trademarks, trade dress, trade secrets, or copyrights arising from the any of the goods or service performed in accordance with this Agreement; or

9.4 The Vendor's performance or attempted performance of this Agreement; or

9.5 Any failure by the Vendor to comply with all local, State and Federal laws and regulations; or

9.6 Any failure by the Vendor to make all reports, payments and withholdings required by Federal and State law with respect to social security, employee income and other taxes, fees or costs required by the Vendor to conduct business in the State of Iowa.

9.7 The Vendor's duty to indemnify as set forth in this Section shall survive the expiration or termination of this Agreement and shall apply to all acts taken in the performance of this Agreement regardless of the date any potential claim is made or discovered by the IRHTP.

10. Termination.

10.1 Termination For Lack Of Authority or Funding. Notwithstanding anything in this Agreement to the contrary and subject to the limitations, conditions and procedures set forth below, the IRHTP shall have the right to terminate this Agreement without penalty and without any advance notice as a result of any of the following:

10.1.1 The Legislature or Governor fails, in the sole opinion of the IRHTP, to appropriate funds sufficient to allow the IRHTP, the HCP's, or any state agency or department charged with responsibility to perform any of the IRHTP's obligations under this Agreement, to either meet its obligations under this Agreement or to operate as required to fulfill its obligations under this Agreement; or

10.1.2 If funds are de-appropriated, not allocated or if the funds needed by the IRHTP, in the IRHTP's sole discretion, are insufficient for any other reason; or

10.1.3 If the IRHTP's, or USAC's authorization to conduct its business is withdrawn or there is a material alteration in the programs or any other program the IRHTP administers; or

10.1.4 If the IRHTP's duties are substantially modified.

10.1.5 Written Notice of Cancellation. The IRHTP shall provide Vendor with written notice of cancellation pursuant to this Section.

10.2 Termination for Cause. The IRHTP may terminate this Agreement upon written notice for the substantial breach by Vendor of any material term if such breach is not cured by Vendor within the time period specified in the IRHTP's notice of breach or any subsequent notice or correspondence delivered by the IRHTP to Vendor. If a cure is feasible and an opportunity to cure is provided, the notice shall specify the exact date by which the condition must be cured. Following expiration of the opportunity to cure or notice from the IRHTP, the IRHTP may seek any legal or equitable remedy authorized by this Agreement or by law. Substantial breach events include but are not limited to the following:

10.2.1 Vendor fails to perform as required by this Agreement.

10.2.2 Vendor fails to make substantial and timely progress toward performance or fails to meet any of the material specifications and requirements stated in this Agreement,

including without limitation the warranties provided in this Agreement, in the RFP or in the Vendor's bid proposal.

10.3 Termination for Convenience. Following 30 days written notice, the IRHTP may terminate this Agreement in whole or in part for convenience without the payment of any penalty or incurring any further obligation to the Vendor. Termination for Convenience can be for any reason or no reason at all if it is in the best interests of the IRHTP.

10.4 Immediate Termination. The IRHTP may terminate this Agreement effective immediately without advance notice and without penalty for any of the following reasons:

10.4.1 Vendor furnished any statement, representation, warranty or certification in connection with this Agreement, which is materially false, deceptive, incorrect or incomplete.

10.4.2 Vendor fails to perform, to the IRHTP's satisfaction, any material requirement of this Agreement or is in violation of any material provision of this Agreement, including, without limitation, the express warranties made by the Vendor.

10.4.3 The IRHTP determines that satisfactory performance of this Agreement is substantially endangered or that a default is likely to occur.

10.4.4 Vendor becomes subject to any bankruptcy or insolvency proceeding under Federal or State law to the extent allowed by applicable Federal or State law including bankruptcy laws.

10.4.5 Vendor terminates or suspends its business.

10.4.6 The IRHTP reasonably believes that Vendor has become insolvent or unable to pay its obligations as they accrue consistent with applicable Federal or State law.

10.4.7 It is alleged that Vendor's processes or materials violate any valid patent, trademark, copyright, other intellectual property right or contract, and the IRHTP reasonably believes that the allegation may impair Vendor's performance of this Agreement.

10.4.8 Vendor has failed to comply with all applicable Federal, State, and local laws, rules, ordinances, regulations and orders when performing within the scope of this Agreement.

10.4.9 Vendor has engaged in conduct that has or may expose the IRHTP to liability, as determined in the IRHTP's sole discretion.

10.4.10 Vendor has a conflict of interest that interferes with fair competition or conflicts with an interest of the IRHTP as determined in the IRHTP's sole discretion.

10.5 Liability for payment at termination In the event of termination of this Agreement for any reason by USAC or the IRHTP, USAC and the IRHTP shall pay only the amounts, if any, due and owing to Vendor for services actually rendered up to and including the date of termination of the Agreement and for which the USAC and the IRHTP is obligated to pay pursuant to this Agreement. Payment will be made only upon submission of invoices and proper proof of Vendor's claim. This provision in no way limits the remedies available to USAC or the IRHTP in the event of a termination under this provision. However, the USAC or the IRHTP shall not be liable for any of the following costs:

10.5.1 The payment of Unemployment Compensation to Vendor's employees;

10.5.2 The payment of Workers' Compensation claims which occur during the Agreement or extend beyond the date on which the Agreement terminates.

10.5.3 Any costs incurred by Vendor in its performance of the Agreement including but not limited to startup costs, overhead or other costs associated with the performance of the Agreement.

10.5.4 Any taxes that may be owed by Vendor for the performance of this Agreement including but not limited to sales taxes, excise taxes, use taxes, income taxes or property.

10.6 Vendor Obligations upon Termination. Upon expiration or termination of this Agreement, or upon request of the IRHTP, the Vendor shall:

10.6.1 Immediately cease using and return to the IRHTP any personal property or material, whether tangible or intangible, provided by the IRHTP to the Vendor and in its, or any subcontractor's, control or possession;

10.6.2 Upon request from the IRHTP, destroy any personal property or material, whether tangible or intangible at no additional cost to the IRHTP, and verify in writing that the designated property or material has been destroyed;

10.6.3 Comply with the IRHTP's instructions for the timely transfer of active files and work being performed by Vendor under this Agreement to the IRHTP or the IRHTP's designee;

10.6.4 Protect and preserve property in the possession of the Vendor in which the IRHTP has an interest;

10.6.5 Stop work under this Agreement on the date specified in any notice of termination provided by the IRHTP;

10.6.6 Cooperate in good faith with the IRHTP, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement Vendor.

10.7 Care of Property. The Vendor shall be responsible for the proper custody and care of any of the HCP or State owned tangible personal property furnished for the Vendor's use in connection with the performance of the Agreement, and the Vendor will reimburse the IRHTP or the State for such property's loss or damage caused by the Vendor, normal wear and tear excepted.

10.8 Reduction of Resources. If, during the Term, the IRHTP experiences a change in the scope, nature or volume of its business, or if the IRHTP elects to change the manner or method by which it does business (including, but not limited to, an election by Iowa Legislature to effect a sale or other disposition of material assets), which have or may have the effect of causing a decrease in the quantity or quality of the Services that will be needed by IRHTP, then IRHTP may request Vendor to reduce the level of Services and the annual Service charges to IRHTP under this Agreement. However any such reduction must not adversely impact upon Vendor's ability to reasonably perform its obligations under the Agreement.

11. Contract Administration.

11.1 Independent Contractor. The status of the Vendor shall be that of an independent contractor. The Vendor, its employees, agents and any subcontractors performing under this

Agreement are not employees or agents of IHA. Neither the Vendor nor its employees shall be considered employees of IHA or IRHTP for Federal or State tax purposes. IHA and IRHTP will not withhold taxes on behalf of the Vendor (unless required by law).

11.2 Compliance with the Law and Regulations.

11.2.1 Compliance with the Law and Regulations. Vendor shall comply with all applicable Federal, State, and local laws, rules, ordinances, regulations and orders when performing within the scope of this Agreement, including, without limitation, all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Management or the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws and laws relating the use of targeted small businesses as subcontractors or suppliers.

11.2.2 The Vendor declares that it has complied with all Federal, State and local laws regarding business permits and licenses that may be required to carry out the work to be performed under this Agreement, including, without limitation, laws governing State of Iowa procurement and contracting.

11.2.3 The Vendor shall give notice to any labor union with which it has a bargaining or other agreement of its commitment under this section of the Agreement. The Vendor shall make the provisions of this Section a part of its contracts with any subcontractors providing goods or services related to the fulfillment of this Agreement.

11.2.4 The Vendor shall comply with all of the reporting and compliance standards regarding equal employment.

11.2.5 The Vendor may be required to submit its affirmative action plan

11.2.6 The IRHTP may consider the failure of the Vendor to comply with any law or regulation as a material breach of this Agreement. In addition, the Vendor may be declared ineligible for future USAC contracts or be subjected to other sanctions for failure to comply with this Section.

11.3 Amendments. This Agreement may be amended in writing from time to time by mutual consent of the parties. All amendments to this Agreement must be fully executed by the parties.

11.4 Third Party Beneficiaries. There are no third party beneficiaries to this Agreement. This Agreement is intended only to benefit IRHTP and the Vendor.

11.5 Choice of Law and Forum.

11.5.1 The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Agreement without regard to the choice of law provisions of Iowa law.

11.5.2 In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Agreement, the exclusive jurisdiction for the proceeding shall be brought in Polk County District Court for the State of Iowa, Des Moines, Iowa, or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa wherever jurisdiction is appropriate.

11.5.3 This provision shall not be construed as waiving any immunity to suit or liability including, without limitation, sovereign immunity in State or Federal court, which may be available to the IRHTP or the State of Iowa.

11.6 Integration. This Agreement, including all the documents incorporated by reference, represents the entire Agreement between the parties and neither party is relying on any representation that may have been made which is not included in this Agreement. The parties agree that if a Schedule, Addendum, Rider or Exhibit or other document is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

11.7 Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent/principal relationship) between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Agreement.

11.8 Consent to Service. The Vendor irrevocably consents to service of process by certified or registered mail addressed to the Vendor's designated agent. The Vendor appoints _____ at _____ as its agent to receive service of process. If for any reason the Vendor's agent for service is unable to act as such or the address of the agent changes, the Vendor shall immediately appoint a new agent and provide the IRHTP with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the IRHTP. Nothing in this provision will alter the right of the IRHTP to serve process in another manner permitted by law.

11.9 Supersedes Former Agreements. This Agreement supersedes all prior Agreements between the IRHTP and the Vendor for the services provided in connection with this Agreement.

11.10 Waiver. Any breach or default by either party shall not be waived or released other than in writing or by a written notice signed by the other party. Failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto.

11.11 Notices.

11.11.1 Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth as follows:

If to the IRHTP: *Mr. Art Spies*

Iowa Hospital Association

100 East Grand Ave – Suite 100

Des Moines, Iowa 50309

If to the Vendor:

[Vendor may provide one (1) contact]

11.11.2 Each such notice shall be deemed to have been provided:

11.11.2.1 At the time it is actually received; or,

11.11.2.2 Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day of delivery; or,

11.11.2.3 Within five days after deposited the U.S. Mail in the case of registered U.S. Mail.

11.11.3 Copies of such notice to each party shall be provided separately.

11.11.4 From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

11.12 **Cumulative Rights.** The various rights, powers, options, elections and remedies of either party, provided in this Agreement, shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law. Nothing in this Agreement shall be construed as affecting, impairing or limiting the equitable or legal remedies to which either party may be entitled as a result of any breach of this Agreement.

11.13 **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the invalid portion shall be severed from this Agreement. Such a determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

11.14 **Express Warranties.** The Vendor expressly warrants all aspects of the items and services provided by it or used by the Vendor and the IRHTP in performance of this Agreement.

11.15 **Warranty Regarding Solicitation.** The Vendor warrants that no person or selling agency has been employed or retained to solicit and secure this Agreement upon an agreement or understanding for commission, percentage, brokerage or contingency except bona fide employees or selling agents maintained for the purpose of securing business.

11.16 **Obligations of Joint Entities.** If the Vendor is a joint entity consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the Agreement activities.

11.17 **Obligations Beyond Agreement Term.** This Agreement shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Agreement. All obligations of the Vendor incurred or existing under this Agreement as of the date of expiration, termination or cancellation will survive the expiration, termination or cancellation of this Agreement.

11.18 Time is of the Essence. Time is of the essence with respect to the successful performance of the terms of this Agreement. The Vendor shall ensure that all personnel providing services to the IRHTP are responsive to the IRHTP's requirements in all respects.

11.19 Authorization. Each party to this Agreement represents and warrants to the other that it has the right, power and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Agreement. This Agreement constitutes a legal, valid and binding obligation upon the parties in accordance with its terms.

11.20 Successors in Interest. All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and legal representatives.

11.21 Counterparts and Facsimile Signatures. The parties agree that this Agreement has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument. The parties further agree that the signatures on this Agreement or any amendment or schedule may be manual, scanned, or a facsimile signature of the person authorized to sign the appropriate document. All authorized scanned or facsimile signatures shall have the same force and effect as if manually signed.

11.22 Additional Provisions. The parties agree that if a Schedule, Addendum, Rider or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

11.23 Use of Third Parties/Prime Vendor Responsibilities. The IRHTP acknowledges that the Vendor may contract with third parties for the performance of any of the Vendor's obligations under this Agreement. All subcontracts shall be subject to advance written approval by the IRHTP. The Vendor may enter into these contracts to complete the project provided that the Vendor remains responsible for all services performed under this Agreement. All restrictions, obligations and responsibilities of the Vendor under this Agreement shall also apply to subcontractors. The IRHTP shall consider the Vendor to be the sole point of contact with regard to all matters related to this Agreement and is not required to initiate or maintain contact with any subcontractor. IRHTP may choose to deny use of any specific third party contractor at IRHTP's sole discretion, in which case the Vendor must obtain a different third party contractor.

11.24 Data Processing Warranty.

11.24.1 The Vendor warrants that each item of hardware, software, firmware, or a custom designed and developed software program or a system which is developed or delivered under, or used by Vendor in connection with its performance of this Agreement, shall accurately process data, including, but not limited to, calculating, comparing and sequencing, from, into, between and among the nineteenth, twentieth and twenty-first centuries, including leap year calculations, when used in accordance with the item(s) documentation provided by the Vendor.

11.24.2 If the items to be developed and delivered under this Agreement are to perform as a system with other hardware and/or software, then the warranty shall apply to the items developed and delivered as the items process, transfer, sequence data, or otherwise interact with other components or parts of the system. This warranty shall survive the term of this

Agreement. The remedies available to the IRHTP for a breach of warranty includes, but is not limited to, repair or replacement of non-compliant items or systems.

11.24.3 Nothing in this warranty shall be construed to limit any rights or remedies of the IRHTP under this Agreement with respect to defects in the items other than the Data Processing Warranty.

11.25 Force Majeure. Neither Vendor nor the IRHTP shall be liable to the other for any delay or failure of performance of this Agreement; and no delay or failure of performance shall constitute a default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by a "force majeure".

11.25.1 As used in this Agreement, "force majeure" includes acts of God, war, civil disturbance and any other causes which are beyond the control and anticipation of the party effected and which, by the exercise of reasonable diligence, the party was unable to anticipate or prevent. Failure to perform by a subcontractor or an agent of the Vendor shall not be considered a "force majeure" unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Agreement. "Force majeure" does not include: financial difficulties of the Vendor or any parent, subsidiary, affiliated or associated company of Vendor; claims or court orders which restrict Vendor's ability to deliver the goods or services contemplated by this Agreement.

11.25.2 If a "force majeure" delays or prevents Vendor's performance, the Vendor shall immediately commence to use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be reasonably determined solely by the IRHTP.

11.25.3 During any such period, the Vendor shall continue to be responsible for all costs and expenses related to alternative performance.

11.25.4 This Section shall not be construed as relieving the Vendor of its responsibility for any obligation which is being performed by a subcontractor or supplier of services unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as described here.

11.26 Records Retention and Access. The Vendor shall permit the Auditor of the State of Iowa or any authorized representative of the State or any authorized representative of the United States government, or USAC, to access and examine, audit, excerpt and transcribe any directly pertinent validation records, financial records, accounting records, books, documents, papers, electronic or optically stored and created records or other records of the Vendor relating to or created as a result of the performance of this Agreement. These records shall be made available to the State, its designees, the Auditor, or an authorized representative of the United States government, or USAC, at reasonable times and at no cost to the requesting organization during the term of this Agreement and for a period of at least (5) years following the termination, cancellation or expiration of this Agreement.

11.27 Taxes. IRHTP declares and Vendor acknowledges that the Vendor and its subcontractors may be subject to certain taxes including but not limited to sales tax, motor vehicle fuel tax, personal or corporate income tax or other taxes or assessments, and to licensing fees or other miscellaneous fees or charges which may be imposed by Federal, State or local law or ordinance. The Vendor and its subcontractors shall be solely responsible for the payment of such taxes. The Vendor shall promptly pay all such taxes, fees or charges when due. IRHTP is

a tax-exempt entity and the Vendor shall not attempt to pass on any costs, including surcharges and fees, to the IRHTP that are attributable to federal, state, or local taxes, including sales tax, motor fuel tax, property tax, or personal or corporate income tax.

11.28 Further Assurances and Corrective Instruments. The Vendor agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

11.29 Assignment and Delegation. This Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party. For purposes of construing this clause, a transfer of a controlling interest in Vendor shall be considered an assignment. If the State, in its sole discretion, determines that the Vendor's assignment of this Agreement to another person or entity is not in the State's best interests, the State may elect to terminate this Agreement with the Vendor without penalty upon thirty (30) days written notice to the Vendor.

11.30 Headings or Captions. The paragraph headings or captions are for identification purposes only and do not limit or construe the contents of the paragraphs.

SECTION 12. BUSINESS DOWNTURN.

12.1 Alternative Agreement In the event of a business downturn or budget difficulties beyond the control of the IRHTP, including budget difficulties of other HCP's or the IRHTP or significant restructuring or reorganization, any of which significantly reduces the volume of OSP plant required by the IRHTP, with the result that IRHTP will be unable to meet its revenue or volume commitments under this Agreement, Vendor and the IRHTP will cooperate in efforts to develop a mutually agreeable alternative.

SECTION 13. REDUCTION OF RESOURCES.

13.1 If, during the Term, the IRHTP or the HCP's experience a change in the scope, nature or volume of its business, or if the IRHTP elects to change the manner or method by which it does business, the Vendor will be asked to reduce the level of Services to IRHTP under this Agreement. However any such reduction must not adversely impact upon Vendor's ability to reasonably perform its obligations under the Agreement.

13.2 In such event, Vendor shall estimate, in writing and in good faith, the aggregate decreased charges to Vendor from IRHTP's ceasing to perform such Services and shall provide such written estimate to IRHTP, no later than 30 days from Vendor's receipt of IRHTP's notice. IRHTP, upon receipt of such estimate, may then elect by written notice given to Vendor within 15 days following receipt of Vendor's written estimate to:

13.3 Withdraw its request for a cessation of part of the Services;

13.4 Implement such partial cessation of Services based upon the estimate of Vendor; or

13.5 Request that Vendor negotiate with IRHTP regarding the aggregate reduction in the Contract Services due to Vendor from IRHTP hereunder as a result of the partial cessation of Services. If IRHTP shall elect to request Vendor to negotiate, the parties shall promptly negotiate in good faith regarding the amount.

SECTION 14. EXECUTION.

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

IOWA RURAL HEALTH TELECOMMUNICATIONS PROGRAM

By: _____

Date: _____

Name: Mr. Art Spies

Title: Project Coordinator - IRHTP

(Vendor Name to be placed HERE)

By: _____

Date: _____

Name:

Title:

ANNEX I
LINK-SEGMENT COMPLETION CHECKLIST
RFP 09-002

A LOCATION – (HCP end)

Cable was installed in a workmanship like manner.
Any exposed cable or jumpers are in accordance with applicable codes
Fiber Optic Cable is properly tagged and identified
Conduit was installed in accordance with HCP instructions
FDP or Bulkheads mounted properly and securely
All FDP or Bulkhead connectors were covered with dust covers
Grounding was accomplished in a workmanship like manner
All building penetrations were properly sealed.
All firewall or building partition penetrations were properly sealed
Restoration Phase I (Initial) was performed to the best of the contractor's ability.
All construction debris and dirt was removed to the satisfaction of the HCP
Locate wire pedestal location is readily identifiable and connected

ROUTE

Cable was installed in accordance with IRHTP specifications
All hand holes and tubs have been readjusted for settling
All open ends of duct installed along the route have been sealed with appropriate duct plug material
Any pavement cracked during the cable installation process has been repaired.
Were pictures that were taken of pre-existing pavement conditions compared to final route reconnaissance and reviewed by HCP, Property owners, and the appropriate governmental entity?
Restoration Phase I (Initial) was performed to the best of the contractor's ability.

CABLE TESTING

Test equipment was calibrated within ninety (90) days prior to testing. A sticker with the date of calibration was affixed to the equipment. A calibration certificate was presented to the IRHTP or its authorized representative upon request.

Each span was tested bi-directionally from end point to end point. Each span trace was recorded so that each splice can be clearly expanded (long range, mid range or high resolution). (Some spans will need all three traces.) A span map was filled out recording each splice loss from each direction and the optical length between splices as well as any other information required by the span map.

Each fiber of each span was tested bi-directionally at 1310 nm and or 1550 nm as directed by IRHTP from end point to end point and record of results submitted to IRHTP for acceptance.

Locate wires, cable sheathes, and/or locate wire terminals have been tested for continuity end-to-end
Boring Traces, As-built or red-line construction drawings have been handed off to IRHTP Representative

Z LOCATION – (Network endpoint or meet point)

Cable was installed in a workmanship like manner.
Any exposed cable or jumpers are in accordance with applicable codes
Fiber Optic Cable is properly tagged and identified
Conduit was installed in accordance with ICN instructions
Bulkheads mounted properly and securely
All unconnected bulkheads are covered with dust covers
Grounding was accomplished in a workmanship like manner
Tubs and hand holes have been properly closed
All duct and conduit seals have been replaced
Locate wire terminations are readily identifiable

SID _____ HCP Name: _____ By: _____

IRHTP Representative: _____ Date: _____

Annex J
Service Provider Identification Number
RFP 09-002

In order to participate in the USAC Rural Health Care project you must secure a USAC Service Provider Identification Number (SPIN) for your company

Information on how to obtain a Service Provider Identification Number (SPIN)

To obtain a new Service Provider Identification Number (SPIN), a service provider must complete the Service Provider Identification and Contact Information (Form 498) and submit it to USAC for review and approval. USAC strongly encourages online filing of this form in order to more quickly process requests.

After online filing, a new service provider will be required to subsequently submit a hard copy of the form to USAC along with a certification letter signed by a company officer. To begin the online filing process, please visit [USAC's e-file page](#).

To download a blank form or view the form instructions, please visit [USAC's forms page](#).

Where to File

Service providers must submit the Form 498 and a signed letter of certification on company letterhead (See Attachments A, B, and C of FCC Form 498) before support payments will be authorized. Please send the form and certification letter to:

Universal Service Administrative Company
Billing and Disbursement
Attn: FCC Form 498
2000 L Street, N.W., Suite 200
Washington, DC 20036

Where to Get More Information

For any questions about completing this form, contact USAC:

E-mail: Form498@bcd.universalservice.org

Telephone: 888-641-8722

FAX: 888-637-6226

ANNEX K
USAC RURAL HEALTH CARE PILOT PROGRAM PROCESS
RFP 09-002

Competitive Bidding Requirement Overview

The RHCPP Selection Order requires the selected participants to conduct a competitive bidding process to select the most cost-effective vendor for design, evaluation, and deployment of the broadband network. To satisfy the competitive bidding requirement, among other things, selected participants must submit an FCC Form 465 that includes a description of services for which the health care provider(s) is seeking support and wait at least 28 days from the date on which this information is posted on USAC's website before making commitments with the selected service provider.

Please also see the Wireline Competition Bureau's Letter to Program Participants on December 20, 2007.

Please feel free to address any concerns to RHCPilot@usac.org or call 800-229-5476.

Vendor Eligibility

All vendors that provide services or equipment eligible for funding under the Pilot Program may submit bids for Pilot Program projects. To receive RHCPP support, vendors also need to obtain a Service Provider Identification Number (SPIN) from USAC.

All telecommunications providers, Internet service providers, and other vendors may receive up to 85% of eligible Pilot Program costs. Network design firms and various types of construction companies may also participate. Project participants may choose to self-provision for these services and/or equipment in that they may do their own design work and/or network deployment, subject to the FCC's competitive bidding requirements. This program will refer to all of these entities collectively as Vendors.

Eligible Pilot Program costs include, but are not limited to:

- the non-recurring costs for design, engineering, materials, and construction of fiber facilities and other broadband infrastructure;
- the non-recurring costs of engineering, furnishing (i.e., as delivered from the manufacturer), and installing network equipment;
- the recurring and non-recurring costs of operating and maintaining the constructed network once the network is operational; and
- carrier-provided transmission services and the costs for subscribing to such facilities and services.

All vendors that supply these services or equipment may submit bids for Pilot Program projects. Vendors interested in submitting bids should familiarize themselves with the 2007 Rural Health Care Pilot Program Selection Order, which details the RHCPP network components eligible and ineligible for support. Additional information concerning the Pilot Program is available on the FCC's Rural Health Care Pilot Program page.

All vendors (including self-provisioning project entities) must have a Service Provider Identification Number (SPIN), issued by USAC, to receive support for providing discounted service and equipment to eligible RHCPP project participants. If a vendor already has a SPIN, this number is good for all USF programs including the RHCPP. Vendors must ensure they have completed Box 8 of FCC Form 498. Vendors may edit this form if they have already obtained a

SPIN. For questions concerning eligibility, please call the Rural Health Care Call Center at 1-800-229-5476. For questions about obtaining a SPIN, please contact Client Services Bureau at 1-888-641-8722. Vendors that need to apply for a SPIN can go to USAC's E-File page.

Prior to receiving any RHCPP support, all vendors must complete a certification stating they will comply with RHCPP rules and use funding only for the purposes intended. A sample template of this certification is available for download. This certification should be submitted to the Project Coordinator.

Searching service requests or Request for Proposal (Online)

To search for and view Pilot Program service requests (e.g., RFP) postings, vendors will go directly to the RHCPP website search postings page.

Rural Health Care Pilot Program Project Detail

Vendors may view the posted service requests (e.g., RFP) and associated documents on the Search Postings page of the RHCPP website. Posted information includes:

- Services requested in PDF Format (e.g., RFP)
- Participating entities/HCPs
- Project Coordinator's name, location, and contact information
- Date Posted to USAC website
- Allowable Contract Date

Provide bids for requested service

After USAC posts a RHCPP Project's *Description of Services Requested & Certification Form* (Form 465) and associated supporting information, all vendors may view the information and provide bids.

The open competitive bidding process is a minimum of 28 days from the date USAC posts a Form 465 on USAC's website. During this minimum 28-day window, vendors may contact the Project Coordinator (or alternate point of contact (POC), if specified) to submit a bid for their service needs. RHCPP Participants must evaluate all bids and select the most cost-effective service or facility provider available. In selecting the most cost-effective bid, in addition to price, the FCC's 2007 Rural Health Care Pilot Program Selection Order requires Participants to consider non-cost evaluation factors that include prior experience, including past performance; personnel qualifications, including technical excellence; management capability, including solicitation compliance; and environmental objectives (if appropriate). Additional discussion of the cost effective standard can be found in paragraphs 78 to 79 of the 2007 Rural Health Care Pilot Program Selection Order. Project Coordinators may conduct bidding rounds that exceed 28 days and may have multiple rounds of selection.

Vendors can search for requests for services on the RHCPP Search Postings page.

NOTE: Vendors or service providers participating in the competitive bid process are prohibited from assisting with or filling out a selected participants' service request (e.g., FCC Form 465 and related materials).

Sign a contract for service

Vendors may enter into a contract with Participants after the minimum 28-day posting requirement has been met.

It is the Participant's responsibility to determine the most cost-effective service and select an eligible vendor before signing a contract. **Participants that enter into an agreement before completion of the 28-day posting requirement are in violation of the FCC's competitive bidding rules for the Rural Health Care Pilot Program and will not receive support.**

In addition:

- (1) Vendors participating in competitive bidding process are prohibited from assisting or filling out the RHCPP Participant's Form 465 – see footnote 281 of the 2007 RHCPP Selection Order.
- (2) Vendors must complete an RHCPP certification. This requirement is found in paragraph 93 of the 2007 RHCPP Selection Order. The template for this certification is available for download.
- (3) Vendors must retain records for 5 years. This requirement is stated in footnote 277 of the 2007 RHCPP Selection Order.

Receive Funding Commitment Letter

When USAC has approved a request for service support (the *Internet Service Funding Request and Certification Form* 466-A, and associated attachments), USAC will send the Project Coordinator and the vendor a Funding Commitment Letter (FCL).

The FCL indicates that the project is eligible for the support specified in the letter contingent upon submitting a *Connection Certification Form* (Form 467).

Funding Commitment Letter Contents

The FCL includes the following information:

- Health Care Provider (HCP) Number, a unique five-digit code assigned to each Pilot project
- HCP Contact Name (person designated as the Project Coordinator)
- HCP Name and Address of the project location supported
- Service Provider Identification Number (SPIN)
- Vendor Name
- Funding Year
- Copy of Approved Network Cost Worksheet
- List of sites where service is being provided
- Type of Service Agreement (e.g., contract, tariff)
- Eligible Support Start Date: first date the project can receive support based on the *Description of Services Requested & Certification Form* (Form 465)
- Support End Date, last day service is eligible for support during the funding year
- Estimated Months of Support
- Non-Recurring Support Amount
- Monthly Recurring Support Amount
- Estimated Total Support Amount
- Funding Request Number, a unique five-digit code assigned by USAC for each project, vendor, and service combination.
- Approved Network Cost Worksheet Items

What to Do When You Receive the FCL

Vendors should validate the SPIN on the FCL. This ensures that future support provided by the vendor is credited to the correct SPIN. If the SPIN is incorrect, please contact the Rural Health Care Pilot Program at 1-800-229-5476.

Health care provider support can only be provided after the vendor receives the Support Acknowledgement Letter from USAC.

Receive Support Acknowledgement Letter

USAC sends a Support Acknowledgment Letter to the Project Coordinator (PC) and vendor.

After receiving the *Connection Certification Form* (Form 467), USAC creates a Support Acknowledgement Letter, which is sent to the PC and vendor.

The Support Acknowledgement Letter provides a detailed report of the approved service(s) and support information.

Health Care Provider (HCP) Support Acknowledgement Letter Contents

The HCP Support Acknowledgement Letter includes the following information:

- Funding Year: 2007, 2008, etc.
- Pilot Project Number (Also known as a HCP Number): unique five-digit number assigned to each Pilot Project
- Funding Request Number: a unique five-digit code assigned by USAC for each Pilot Project, vendor and service combination.
- Billing Account Number: account code for a Pilot Project credited with USF support
- Pilot Project Name: name of project being supported
- Pilot Project Address: address of the project being supported
- Pilot Project Mailing Organization and Address if different than above
- Service Provider Identification Number (SPIN) – number issued by USAC to a vendor
- Vendor name: name of vendor providing service or equipment to project
- Service: type of service or equipment provided
- Support Start Date: first date HCP can receive support based on the *Description of Services Requested & Certification Form* (Form 465)
- Support End Date: last day service is eligible for support during the funding year
- Support Date: month and year for support amount
- Support Amount: support for the month (\$)
- Total: total support for the funding year (\$)

This letter verifies that a Form 467 has been received. The support is credited to the Billing Account Number shown on the Support Acknowledgement Letter. A sample [Support Acknowledgement Letter](#) is available for download.

What to Do When You Receive the Support Acknowledgement Letter

The Support Acknowledgement Letter will be sent to the PC and vendor when the *Connection Certification Form* (FCC Form 467) is processed by USAC.

Once the vendor receives the letter, it can bill the project for services completed. The entity that receives the bill and pays for the service is defined as the "billed entity."

USAC requests that vendors check the SPIN on the Support Acknowledgement Letter to make sure it is correct.

Participants should check that the service provided was actually working or installed and is being billed for the time period on the Support Acknowledgement Letter. Be sure that the Billing Account Number listed on the letter is the same Billing Account Number attached to the service and PC location or PC mailing organization and address. This ensures support is credited to the entity paying for the service. If you are unsure whether the Billing Account Number is correct or if you find an error on the Support Acknowledgement Letter, please contact the Rural Health Care Pilot Program at 1-800-229-5476 and do not start applying program discounts.

Send invoice to USAC

Once the vendor provides the service and invoices the project, the Project Coordinator (PC) for each Pilot Project is responsible for approving invoices for the vendor's use. These invoices are based on the approved Funding Commitment Letter. The vendor then signs and returns these pre-filled invoices to USAC.

The Project Coordinator shall also confirm and demonstrate to USAC that the selected participant's 15 percent minimum funding contribution has been provided to the service provider for each invoice. USAC also will review invoices to ensure network deployments are proceeding according to the Participants' network plans.

Where and When to Send Invoices

Project Coordinators can mail or fax USAC a copy of the RHCPP Invoice:

Universal Service Administrative Company
Rural Health Care Program
100 S. Jefferson Road
Whippany, NJ 07981

Fax Number: 973-599-6514 (to the attention of the project coach)

Bi-Monthly Invoicing Cycle

Invoices received from the 1st through the 15th of the month will be processed by the 20th of the month. Invoices received from the 16th through the 31st of the month will be processed by the 5th of the following month.

Example

If an invoice is received January 29 it will be processed during the first five days of February. If an invoice is received February 1, it will be processed by February 20. The date the invoice is received by USAC will be used to determine when the invoice will be processed, not the date mailed by the project coordinator. Once an invoice is processed by USAC, it will take about 10 days to issue payment. If payment has not been received within 45 days of invoicing USAC, please call 1-800-229-5476 to be sure the invoice was received and is being processed.

Invoice Formatting

USAC has designed a sample invoice format that project coordinators and vendors may use in the RHCPP. The RHCPP Invoice consists of a header and individual invoice line items for each Pilot Program service credited. Support amounts are based on monthly submissions of actual incurred expenses.

Note

USAC has developed an administrative process to streamline the invoice submission and approval process. Please contact the Project Coordinator for additional information on this process.

AFFIDAVIT OF ART SPIES

I, Art Spies, swear or affirm:

- I am Arthur Spies, Senior Vice President for Member Services of the Iowa Hospital Association.
- I also serve as the Iowa Rural Health Telecommunications Program (IRHTP) Project Coordinator.
- From my position as Project Coordinator, I have personal knowledge of the following facts.

Information on RFP Process for Quality Assurance Services

- RFP 00 was for a fiber build-out with a quality assurance investigation component included. When bids came in for the quality assurance component the bids were too expensive for the project. Because of the costs, none of the bids were accepted. There was recognition by IRHTP staff and the IRHTP Steering Committee that the scope of the quality assurance portion of the project would need to be changed to be feasible.
- Tony Crandell, the owner of Access Integration Services, mentioned that he might be interested in bidding on a more scaled back quality assurance RFP if IRHTP decided in the future to issue one.
- Dave Swanson works for the Iowa Communications Network (ICN) as a business development manager under the Business Services Division. The ICN is a state-owned, state-wide fiber optic network. The ICN is subject to competitive bidding procedures, so Dave Swanson is familiar with the competitive bidding requirements.
- After Tony Crandell's disclosure, Dave Swanson and I recognized that Tony Crandell would have to be excluded from any further discussion regarding any future quality assurance RFP.
- After discussions with me, Dave Swanson wrote RFP02 and I reviewed it.
- Between November 2008 when the Steering Committee rejected all bids for quality assurance and when RFP02 was issued and bids received, there was no communication between Tony Crandell and Dave Swanson or me regarding the quality assurance inspection RFP.
- When bids were received for RFP02, Tony Crandell's company AIS had submitted a bid.
- The bids were reviewed during a meeting involving Dave Swanson; Kent Freise, Outside Plant Lead, an ICN engineer; and me.
- Tony Crandell had no notice of the meeting and did not participate.
- Each participant separately scored the bids received in a scoring matrix (see email from Art Spies, 9/22/09 and attachments).
- The objective criteria for scoring the bids were included in the RFP.

ATTACHMENT H

- After the in-person meeting in which the bids were scored, but before the bids were approved, the Steering Committee received copies of the bids received and the scoring matrixes.
- USAC reviewed the RFP package and the objective criteria for scoring the RFP.
- USAC provides a review process for all 465 and 466 submissions that identifies deficiencies in the information provided and communicates with me in a 14 day letter if there are any required changes for approval of the required forms and documents submitted.
- USAC uploaded the RFP onto its system after the RFP was approved. (see USAC letter, July 8, 2009).
- In addition, after the bids for RFP 02 were accepted, USAC also reviewed the 466 package, but did not raise any issues or concerns regarding the process, bids received, bids awarded, or disclosures filed.
- The Steering Committee voting members voted by email on awarding the bid for RFP02 (see consolidated email responses and individual emails attached). Tony Crandell was not included in the email chain.
- Tony Crandell was excluded from the discussions leading to the crafting of RFP02, the meetings and discussions objectively scoring the bids received, and the Steering Committee's recommendation to approve an award under RFP02.
- AIS's bid was selected based on objective criteria, such as the fact that AIS could provide a lower cost, more responsive service because the services would be based out of Iowa, whereas the other bid was from a company in Illinois that would be based out of state, be less responsive, and cost more to administer.
- Later in the process, a few hospitals that had previously declined to participate program sought to be included and participation agreements on the project were completed (see e.g. emails from Jason Harrington and to Skiff Medical Center). Despite the small number of hospitals seeking to be added to the existing service, the additional service had to be competitively bid.
- There was recognition between Dave Swanson and me that Tony Crandell's company, AIS, would likely bid on the additional sites, so Tony Crandell was again excluded entirely from the RFP process.
- AIS did submit a bid for the additional sites in response to RFP05. There were no other bids received. The Steering Committee approved it. (see June 21, 2012 Memorandum of Conference Call Summary and June 21, 2012 Memorandum to FCC/USAC)
- Despite the time between the RFPs and the likelihood that few if any other companies would bid on such as small project, AIS's bid was at the same price per site as the previous AIS bid.

- If there had been any competitive advantage or abuse in the process, AIS could have decided to increase the cost of service for the additional sites or bid for the sites in a way that was adverse to the project, but it did not.

Information on RFP work on Connectivity Services.

- The initial Pilot program proposal/FCC application for IRHTP was for a capital build-out. The proposal explained that the hospitals would be connected to the state-wide Iowa Communications Network (ICN) backbone to provide broadband service/connectivity to these rural hospitals. Various service providers bid for and were awarded the capital built out contracts to connect rural hospitals to the ICN network.
- The sustainability aspect of the project was for the hospitals to access the ICN and to pay recurring circuit fees for the connections that had been built. (see Iowa Rural Health Telecommunications Program Sustainability Plan June 2009).
- These circuit fees are required so the entire network can be functional and all hospitals can communicate through the ICN fiber backbone without the delay or potential security threats posed by submitting health information through the Internet.
- Circuit fees allow the participating hospitals to utilize the entire built out through the IRHTP project.
- USAC was aware that payment of recurring circuit fees to the ICN would be necessary for the sustainability of the network as early as spring 2009 when the sustainability plan was proposed and IRHTP made clear it would seek subsidies for the circuit fees.
- USAC negotiated regarding the wording of the sustainability plan and whether the project was "public" enough for the subsidies before approving the sustainability plan. (see IRHTP Steering Committee Conference Call May 14, 2009 and email chain between Art Spies and Daniel Johnson and Barbara Sheldon from USAC).
- USAC never notified IRHTP that the ICN would not be an appropriate vendor for the circuit fees or that there would be an issue in using the ICN's approved rates set by the Iowa State statutory board.
- In February 2012, USAC sent notice that it would accept "bridge funding" proposals from Pilot Project participants to maintain support for the participants to transition them into the Primary Program/Rural Health Care support mechanism (see email to Art Spies notifying of FCC's public notice DA 12-273).
- IRHTP sought bridge funding to pay for a year of circuit (usage) fees for participating hospitals. (see Art Spies letter to Sharon Gillett).

- Despite knowledge that the ICN was currently charging circuit fees and that the sustainability of the project was based on payment of circuit fees to the ICN, IRHTP was required to competitively bid this circuit fee contract. Bridge funding occurred as a result of competitive bidding circuit fees.
- Based on the fact that the approved Pilot proposal had been for a capital build out utilizing the ICN as the backbone of the network and that the ICN circuit fees were an anticipated part of the project, it was obvious and expected that the ICN would be among the potential bidders on the RFP.
- Because the ICN was likely to bid on RFP04, Dave Swanson of ICN and any other ICN employee was excluded from the development of the RFP. Tony Crandell drafted RFP04 with review and oversight by Art Spies.
- I disclosed Tony Crandell's assistance with drafting RFP04 to USAC. (see April 19, 2012 Memorandum Disclosures).
- Based on his extensive knowledge and experience working with the ICN technology, ICN has from time to time used Tony Crandell as an independent contractor for project management on an hourly basis.
- Tony Crandell's duties have been under the authority of the Operations and Engineering division of the ICN. He makes reports to and bills for services to a separate division of the ICN than Dave Swanson.
- Tony Crandell's extensive knowledge of the technology already in use in the IRHTP project and his general familiarity with the requirements of the competitive bidding process were why IRHTP choose to utilize his services as a consultant to assist with the circuit connectivity RFP process. It was necessary for IRHTP staff to have access to technical knowledge of the ICN technology to be able to draft the technical specifications for the competitive bidding RFP to rely on the ICN backbone structure for providing circuit connectivity and to effectively review the bids received.
- There are very few individuals within the state that could provide consultation on the necessary technical issues.
- I can attest that I did not discuss any aspect of the connectivity RFP at any point before the award of the contract to ICN with Dave Swanson or anyone else at ICN.
- RFP04 was drafted to reflect the requirements for the network to function as proposed by the IRHTP project and the previous build-out and nothing more.
- Dave Swanson was not included in the IRHTP meeting scoring the bid based on the public RFP criteria.

- The ICN did bid on providing recurring broadband circuit fee service it was already providing to the hospitals connected to the network. Its bid was consistent with the publicly available rates set by the ICN's statutory body, the Iowa Telecommunications and Technology Commission (ITTC). See <http://www.icn.iowa.gov/about-icn>. No other competitive bids were received.
- Tony Crandell and I reviewed the ICN bid and found that it met all the stated requirements for the project contained in the RFP. (see May 29, 2012 Memorandum to IRHTP Steering Committee).
- The Steering Committee reviewed and approved the ICN bid. (see May 29, 2012 Conference Call Summary)
- Because the ICN is a state entity, its circuit rates are open records.
- While the ICN was the only entity that bid on RFP04, other entities could have provided bids, if they were capable and had chosen to, with full knowledge of the ICN's stated rates and ICN's network reach. ICN gained no special insight or unfair advantage in bidding for the provision of circuit fees due to Dave Swanson's participation in previous unrelated IRHTP RFPs. As previously noted ICN already had been providing this service without the subsidiary.
- Completely apart from program bidding requirements, the ICN was likely the only fiber network in Iowa capable of providing the service that the Pilot project sought to provide to Iowa's rural hospitals. Nevertheless, recognizing for competitive bidding for discounted eligible services, the IRHTP followed FCC rules and policies in ensuring that possible vendors did not have a seat at the table in preparing, evaluating or awarding RFPs. Ironically, if there had been commercial telecommunication companies capable and/or willing to provide these services on a cost effective basis in the first place to Iowa rural communities, then there likely would not have been the need for the IRHTP to be formed to participate in the FCC's rural healthcare Pilot project.

USAC Knowledge of ICN's likely role in providing the discounted Connectivity Service.

- As stated to the USAC auditors and in the accompanying material, USAC was aware of ICN's pivotal role in providing the fiber backbone to IRHTP participating hospitals. It was a critical aspect of the Pilot program. Only later was the program modified to allow discounted service fees. USAC was aware of IRHTP's sustainability plan for circuit fees and costs in spring 2009 when the sustainability plan was filed. That plan made plain that ICN was the likely provider of connectivity (circuit fees) to its own backbone network.
- Similar to other FCC Form 465 Requests for Services, IRHTP disclosed for RFP #04 that Tony Crandell of AIS had assisted in drafting the RFP. USAC was well aware of ICN's historic relationship with IRHTP starting with the Pilot program application approved by the FCC. USAC never raised concern with ICN being awarded the bid at any time.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE
AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

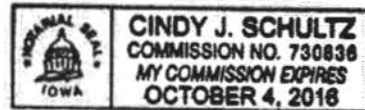
Art Spies
Art Spies, IRHTP Project Coordinator

October 3, 2014
Date

State of Iowa: County of Polk

Signed and sworn to (or affirmed) before me on 10-3-14 (date) by _____
Art Spies
(name(s) of person(s) making statement).

Cindy Schultz
(Signature of notarial officer)



My commission expires: 10-4-16



Universal Service Administrative Company

To: Craig Davis, Vice President, Rural Health Care Division

From: Wayne Scott, Vice President, Internal Audit Division

Date: September 5, 2014

Re: **Independent Auditor's Report on Iowa Rural Health Telecommunication Program's Compliance with Rural Health Care Pilot Program Rules (USAC Audit No. RH2013PP018)**

Introduction

The Universal Service Administrative Company (USAC) Internal Audit Division (IAD) performed an audit of Iowa Rural Health Telecommunications Program (Beneficiary), Health Care Provider (HCP) number 17226, for compliance with the regulations and orders governing the Rural Health Care Pilot Program, set forth in the *Pilot Program Selection Order*,¹ as well as other program requirements (collectively, the Rules). Compliance with the Rules is the responsibility of the Beneficiary's management. USAC IAD's responsibility is to express a conclusion on the Beneficiary's compliance with the Rules based on our audit.

The Beneficiary provides health care services within the states of Iowa and South Dakota.

Purpose and Scope

The purpose of our audit was to determine whether the Beneficiary complied with the Rules. We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States (2011 Revision).² Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives.³ Our audit included examining, on a test basis, evidence supporting the type and amount of services received, as well as performing other procedures we considered necessary to form a conclusion. We believe

¹ *In the Matter of Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, FCC 07-198, 22 FCC Rcd 20360 (2007) (*Pilot Program Selection Order*).

² See U.S. Government Accountability Office, *Government Auditing Standards*, GAO-12-331G, § 6.56 (Rev. Dec. 2011).

³ See *id.*

that the evidence obtained provides a reasonable basis for our findings and conclusions based on our objectives.

The following chart summarizes the Rural Health Care Pilot Program support amounts committed and disbursed to the Beneficiary for Funding Year 2009 (audit period):

| Service Type | Amount Committed | Amount Disbursed |
|----------------------------------|---------------------|--------------------|
| Network Equipment | \$3,921,289 | \$3,738,216 |
| Network Management Costs | \$231,590 | \$231,590 |
| Infrastructure and Outside Plant | \$4,385,473 | \$4,379,252 |
| Leased Facilities or Services | \$1,379,478 | 1,240,789 |
| Ethernet Services | \$381,161 | \$378,698 |
| Total | \$10,298,991 | \$9,968,545 |

Note: The amounts committed and disbursed reflect funding year activity as of July 10, 2014.

The committed total represents 26 FCC Form 466-A applications with 26 Funding Request Numbers (FRNs). We selected thirteen FRNs, which represent \$9,480,910 of the funds disbursed during the audit period, to perform the procedures enumerated below with respect to the Funding Year 2009 applications submitted by the Beneficiary.

Our procedures were performed to determine whether the Beneficiary complied with the Rules. For the purposes of this report, a finding is a condition that shows evidence of noncompliance with the Rules.

Conclusion

Based upon the test work performed, our examination disclosed that the Beneficiary did not comply with the Rules as set forth in the four audit findings discussed below. A summary of the procedures and results is included below.

Findings

- Service provider involvement in Beneficiary's competitive bidding process.
- Rural Health Care Pilot Program support used to fund ineligible participants.
- Beneficiary certified and service provider submitted invoices to USAC prior to collecting payment for the minimum 15 percent contribution from the Beneficiary.
- Beneficiary did not notify USAC and the FCC that the network project was not initiated within six months of the funding commitment letter (FCL).

Exceptions Taken and Recovery Action

| Findings | Monetary Effect of Finding | USAC Recovery Action |
|--|-----------------------------------|-----------------------------|
| #1 – Service provider involvement in Beneficiary's competitive bidding process. | \$529,147 | \$529,147 |
| #2 - Rural Health Care Pilot Program support used to fund ineligible participants. | \$78,828 | \$78,828 |
| #3 - Beneficiary certified and service provider submitted invoices to USAC prior to collecting payment for the minimum 15 percent contribution from the Beneficiary. | \$0 | \$0 |
| #4 – Beneficiary did not notify USAC and the FCC that the network project was not initiated within six months of the Funding Commitment Letter. | \$0 | \$0 |
| Total Net Monetary Effect | \$607,975 | \$607,975 |

Audit Procedures, Findings, and Responses**A. Application Process**

We obtained an understanding of the Beneficiary's processes relating to the Rural Health Care Pilot Program. Specifically, we obtained and examined documentation to support its effective use of funding and that adequate controls exist to determine whether funds were used in accordance with the Rules. We used inquiry and direct observation to determine whether the Beneficiary used funding as indicated in its Network Cost Worksheet (NCW).

We obtained and examined documentation to determine whether the Project Coordinator obtained Letters of Agency from the Beneficiary's network HCPs and/or the HCPs' health systems authorizing the Beneficiary's lead entity and/or Project Coordinator to act on their behalf, confirming the HCPs' agreement to participate in the network, and that the entities agree to avoid improper duplicate support for any HCPs participating in multiple networks.

We also obtained and examined the FCC Forms 466-A and the FCC Form 466-A Attachments to determine whether the Beneficiary identified the participating HCPs and documented the allocation of eligible costs related to the provision of health care services. We also obtained and examined the NCW to determine whether ineligible costs, if any, were identified and ineligible entities, if any, paid their fair share. We did not assess the reasonableness of any fair share amount since the Rules do not define what is considered reasonable.

B. Competitive Bid Process

We obtained and examined documentation to determine whether all bids for the managed Ethernet services received were properly evaluated. We used inquiry and examined documentation to determine whether the Beneficiary considered price and the non-cost factors including prior experience, personal qualifications, management capability, and environmental objectives (if appropriate). We obtained and examined documentation to determine whether no evaluation criteria was weighted higher than price but we did not assess the reasonableness of the weight assigned to the non-cost factors because the Rules do not define how to value the non-cost factors. We also obtained and examined evidence that the Beneficiary waited the required 28 days from the date the FCC Form 465 was posted on USAC's website before selecting or signing contracts with the selected service provider(s). We evaluated the services requested and purchased for cost-effectiveness as well.

We did not examine the competitive bid process as it relates to the Internet2 annual subscription services because the Rules provide a waiver of the competitive bidding requirements for such services.¹

C. Eligibility

We used inquiry and direct observation, and obtained and examined documentation to substantiate that the Beneficiary's eligible HCPs were public or non-profit eligible health care providers. We also obtained and examined documentation to determine whether the Beneficiary connected more than a *de minimis* number of eligible rural HCPs. For the purposes of our audit, *de minimis* is defined as one since the Rules do not define *de minimis*. We verified that a *de minimis* number of eligible HCPs are located in a rural area and verified that the eligible HCPs' physical addresses were the same as listed on the applications. We verified through inquiry, and obtained and examined documentation to determine whether the entities participating in the Project were not funded by the Rural Health Care (RHC) Pilot Program for the same services funded by the RHC Primary Program or any other Universal Service support program.

We used inquiry and direct observation, and obtained and examined documentation to determine whether ineligible entities, if any, were properly reported on the FCC Form 465.

D. Invoicing Process

We obtained and examined invoices for which payment was disbursed by USAC to determine whether the services identified on the service provider invoices submitted to USAC and the corresponding service provider bills submitted to the Beneficiary were consistent with the terms and specifications of the service provider agreements. We also obtained and examined documentation to determine whether the Beneficiary

¹ See *Pilot Program Selection Order*, 22 FCC Rcd 20368, ¶ 20.

provided proper notice of the services' initiation to the FCC and USAC. In addition, we obtained and examined documentation to determine whether the Beneficiary paid its required 15 percent minimum contribution and that the required contribution was from eligible sources. We also obtained and examined documentation to determine whether the Project's disbursements did not exceed 85 percent of the total costs.

E. Reporting Process

We obtained and examined documentation to determine whether the Beneficiary timely submitted its quarterly reports to USAC and the FCC, and that the reports included the required information, including an update on the Beneficiary's Sustainability Plan. We obtained and examined the Sustainability Plan to determine whether it included the required content. We did not conclude on the reasonableness of the Sustainability Plan or whether the Project can meet or maintain the objectives described in the plan because the Rules do not define how to assess the reasonableness of the content included in the Sustainability Plan.

F. Health Care Provider Location

We verified through inquiry and observation that the services provided existed and were functional. We also verified through inquiry and observation that the supported services for eligible HCPs were used for purposes reasonably related to the provision of health care services and in accordance with the Rules.

Our audit findings, as well as the responses to the findings, are provided below. We have evaluated the validity of the Beneficiary's and service provider's (where applicable) responses to our findings, and our position on these issues remains unchanged.

Finding #1
Service Provider Involvement in Beneficiary's Competitive Bidding Process

Condition

IAD examined documentation, including the FCC Forms 465, Requests for Proposal (RFPs), bids received for the services solicited in the RFPs, and bid evaluation matrices to determine whether the Beneficiary complied with the Rules governing the competitive bidding process for FRNs 41446, 63145, 64723, and 68296. In addition, IAD inquired of the Beneficiary and examined documentation to obtain an understanding of the RFP development and bid evaluation process that was used for the Beneficiary's Rural Health Care Pilot Program (RHCPP) funded network.

The Beneficiary issued the following six RFPs for its RHCPP funded network:

- (1) RFP 08-001 (Outside Plant Fiber) (USAC RFP#00);
- (2) RFP 08-002 (Network and Site Electronics) (USAC RFP#01);
- (3) RFP 09-002 (Quality Assurance Inspection Services) (USAC RFP # 02);
- (4) RFP 10-001 (Broadband Lit services) (USAC RFP #03);
- (5) RFP 12-004 (Outside Plant Fiber, Quality Assurance Inspection Services, and Network Electronics) (USAC RFP #05); and
- (6) RFP 12-005 (Meshed Ethernet Bandwidth Connectivity) (USAC RFP #04).

For RFP 08-001 (USAC RFP#00), the Beneficiary also requested Quality Assurance Inspection Services but did not award a contract after evaluating the bids for those services.

The Beneficiary selected Iowa Communications Network (ICN) as the service provider for RFP 12-005 (USAC RFP #04) (FRNs 64723 and 68296) and selected Access Integration Specialists (AIS) to provide Quality Assurance Inspection Services for RFP 09-002 (USAC RFP # 02) (FRN 41446) and RFP 12-004 (USAC RFP #05) (FRN 63145).

The Beneficiary informed the Rural Health Care Program (RHCP) on May 29, 2008, that ICN assisted in the development of the RHC Pilot Program application to the FCC, assisted in the development of the RFPs, functioned as the project manager for the fiber build-out and electronics, and staffed and evaluated the bids received.¹ On June 29, 2009, the Beneficiary informed RHCP that ICN also assisted in the development of the initial and revised Quality Assurance Inspection Services RFPs 08-001 and 09-002.² The Beneficiary also explained that Tony Crandell (AIS) assisted with the request for proposal and bid evaluation for the network plan when the Beneficiary prepared its application for the RHCPP in 2007.³ The Beneficiary confirmed that Tony Crandell (AIS), Dave Swanson (ICN) and Art Spies (IRHTP) were the main persons responsible

¹ Email from Arthur Spies, IRHTP, to USAC (May 29, 2008).

² Memorandum from Arthur Spies to RHCP, "Use of Vendors as Consultants and Project Funding for QA Inspection Services RFP 002," (June 29, 2009).

³ Memorandum from Art Spies, IRHTP, to USAC (Oct. 2, 2013).

for reviewing the bids received in response to the RFPs, but Tony Crandell was excluded from the bid evaluations for RFP 09-002 (USAC RFP # 02) and the quality assurance section of RFP 12-004 (USAC RFP #05) and Dave Swanson was excluded from the bid evaluation for RFP 12-005 (USAC RFP #04).¹ The Beneficiary further confirmed that Tony Crandell (AIS) was not an employee with ICN, but has been contracted by ICN "over the last six years for various projects such as developing scopes of work for various ICN projects and ensuring ICN construction contractors met all of ICN and industry construction standards and practices."² IAD reviewed documentation from the Beneficiary that indicates Art Spies (IRHTP), Dave Swanson (ICN) and/or Tony Crandell (AIS) were part of the Beneficiary's evaluation committee responsible for reviewing the bid responses to the six RFPs.³

IAD noted that Tony Crandell, owner of service provider, AIS, and a consultant to ICN, participated in the development of RFP 08-001 (USAC RFP#00), RFP 08-002 (USAC RFP#01), RFP 10-001 (USAC RFP #03), RFP 12-005 (USAC RFP #04), and sections of RFP 12-004 (USAC RFP #05) (outside plan dark fiber and network electronics sections).⁴ In addition, Tony Crandell assisted in the evaluation of the service provider bids received for the aforementioned RFPs. IAD also noted that Dave Swanson, employee of ICN, participated in the development of RFP 08-001 (USAC RFP#00), RFP 08-002 (USAC RFP#01), RFP 09-002 (USAC RFP # 02), RFP 10-001 (USAC RFP #03), and RFP 12-004 (USAC RFP #05).⁵ Mr. Swanson also assisted in the evaluation of the service provider bids received for the aforementioned RFPs.

AIS submitted two bids and was awarded contracts for the services solicited in RFP 09-002 (USAC RFP # 02) and the *Quality Assurance Services* section in RFP 12-004 (USAC RFP #05). IAD examined the contracts and noted that Tony Crandell (AIS) was also the key individual that provided consultation services during the Beneficiary's network development, which included assisting with the development of RFPs 08-001 (USAC RFP #00), 08-002 (USAC RFP #01), 10-001 (USAC RFP #03), 12-005 (USAC RFP #04), and sections of RFP 12-004 (USAC RFP #05). IAD also noted that quality assurance services were originally requested in RFP 08-001 (USAC RFP #00), but a contract was not awarded for the quality assurance services after the Beneficiary evaluated the bids received for RFP 08-001 (USAC RFP #00). Mr. Crandell was one of the bid evaluators for RFP 08-001 (USAC RFP #00) and assisted in the development of this RFP.⁶

ICN submitted a bid and was awarded a contract for the services solicited in RFP 12-005 (USAC RFP #04). ICN was also involved in the development of RFP 08-001 (USAC RFP #00), RFP 08-002 (USAC RFP #01), RFP 09-002 (USAC RFP #02), RFP 10-001

¹ Memorandum from Art Spies, IRHTP, to USAC (Mar. 13, 2014).

² Memorandum from Art Spies, IRHTP, to USAC (May 15, 2014).

³ See, e.g., Memorandum from Art Spies, IRHTP to USAC (Mar. 13, 2014).

⁴ Memorandum from Art Spies, IRHTP, to USAC (May 15, 2014).

⁵ *Id.*

⁶ *Id.*

(USAC RFP #03), and RFP 12-004.¹ Dave Swanson (ICN) also assisted in the bid evaluation of the service provider bids received for these RFPs.

The first FCC Form 465 was for RFP 08-001 (USAC RFP#00) and it was submitted to the RHCP on July 28, 2008. The FCC Form 465 and the associated RFPs 08-001 (USAC RFP#00) and 08-002 (USAC RFP#01) were posted on USAC's website on July 31, 2008. As noted above, the Beneficiary informed the RHCP on May 29, 2008, that ICN assisted in the development of the RHC Pilot Program application to the FCC, assisted in the development of the RFPs, functioned as the project manager for the fiber build-out and electronics, and staffed and evaluated the bids received.² On June 29, 2009, the Beneficiary informed RHCP that ICN also assisted in the development of the initial and revised Quality Assurance Inspection Services RFPs 08-001(USAC RFP#00) and 09-002 (USAC RFP # 02).³ The Beneficiary did not identify Tony Crandell or AIS as a participant in the Beneficiary's competitive bidding process in either the May 29, 2008 or the June 29, 2009 notification letter. However, the Beneficiary informed the RHCP of AIS's assistance in the development of the RFPs 10-001 (USAC RFP #03) and 12-004 (USAC RFP #05) and the evaluation of the bids received for those RFPs on April 11, 2011, and June 21, 2012, (which was after the competitive bidding process was completed and a service provider was selected).⁴ In addition, the Beneficiary informed the RHCP on April 19, 2012, that AIS assisted in the development of RFP 12-005 (USAC RFP #04) prior to posting the FCC Form 465 on USAC's website on April 27, 2012.⁵

The Beneficiary informed IAD that AIS was not involved in the development of RFP 09-002 (USAC RFP # 02) or in the *Quality Assurance Services* section of RFP 12-004 (USAC RFP #05) nor was AIS involved in the evaluation of the bids received for RFP 09-002 (USAC RFP # 02) or the *Quality Assurance Services* section of RFP 12-004 (USAC RFP #05).⁶ In addition, the Beneficiary informed IAD that ICN was not involved in the development of RFP 12-005 (USAC RFP #04), or the evaluation of bids received for RFP 12-005 (USAC RFP #04).⁷

IAD examined the competitive bidding documentation for RFP 09-002 (USAC RFP # 02), and noted that another service provider submitted a bid of \$192,214 and that AIS submitted a bid of \$169,800. AIS was awarded the contract for FRN 41446. IAD also examined the competitive bidding documentation for RFP 12-004 (USAC RFP #05), and noted that AIS was the only service provider to bid for the *Quality Assurance Services*

¹ *Id.*

² Email from Arthur Spies, IRHTP, to USAC (May 29, 2008).

³ Memorandum from Arthur Spies to RHCP, "Use of Vendors as Consultants and Project Funding for QA Inspection Services RFP 002," (June 29, 2009).

⁴ Memorandums from Arthur Spies to USAC/FCC, 'Evaluation, Scoring and Award IRHTP RFP10-001', dated April 11, 2011 and 'Evaluation, Scoring and Awards for IRHTP RFP12-004, dated June 21, 2012.

⁵ Memorandum from Arthur Spies to RHCP, 'Disclosures', (Apr. 19, 2012).

⁶ Emails from Arthur Spies, (Mar. 13, 2014 and May 6, 2014).

⁷ Memorandum from Art Spies, IRHTP, to USAC (May 15, 2014); Memorandum from Art Spies, IRHTP, to USAC (June 7, 2012); Memorandum from Art Spies, IRHTP, to USAC (Apr. 19, 2012).

requested in RFP 12-004 (USAC RFP #05) and that AIS' bid was for \$12,000. AIS was awarded the contract for quality assurance services for FRN 63145.

IAD examined the competitive bidding documentation for RFP 12-005 (USAC RFP #04) and noted that ICN was the only service provider to bid for RFP 12-005 (USAC RFP #04) and that ICN's bid offered Ethernet connectivity to 88 locations with up to 1 Gigabits per second access at a monthly cost ranging from \$50,550 to \$204,550 depending on the speed of access selected for each location. ICN was awarded the contract for FRNs 64723 and 68296.

Because Mr. Crandell was involved in the development and execution of the IRHTTP Pilot Project, the development of RFPs 08-001 (USAC RFP#00), 08-002 (USAC RFP#01), and 12-005 (USAC RFP #04), and the Beneficiary's vendor selection process for RFPs 08-001 (USAC RFP#00), 08-002 (USAC RFP#01), 10-001 (USAC RFP #03), and 12-005 (USAC RFP #04), and the *Outside Plant – Dark Fiber Construction or IRUs and Network Electronics – Spare Parts* sections of RFP 12-004 (USAC RFP #05), Mr. Crandell had extensive knowledge about the Beneficiary's network and competitive bid processes from his roles as a consultant to ICN and the owner of AIS. In addition, because Mr. Swanson (ICN) was involved in the development and execution of all the Beneficiary's RFPs, with the exception of RFP 12-005 (USAC RFP #04), Mr. Swanson similarly had extensive knowledge about the Beneficiary's network and competitive bid processes. The Beneficiary did not demonstrate that it used a firewall mechanism to prevent AIS or ICN from having an advantage in the competitive bid process for the requested services for FRNs 41446, 63145, 64723, and 68296. In addition, AIS and ICN's extensive involvement in the IRHTTP Pilot Project and the development and vendor selection process for the Beneficiary's other RFPs may have disadvantaged one provider over another and discouraged other service providers from submitting bids for the requested services that were awarded to ICN and AIS. Further, ICN's consultant, Tony Crandell, was involved in the development and bid evaluation process for RFP 12-005, which resulted in the selection of ICN. Therefore, the Beneficiary did not comply with the Rules governing the competitive bidding process for FRNs 41446, 63145, 64723, and 68296 (criteria 1 to 6).

Cause

The Beneficiary did not demonstrate sufficient knowledge of the Rules governing the competitive bidding process and did not have adequate controls or procedures in place to prevent individuals with extensive knowledge of the Beneficiary's network from gaining a competitive advantage during the Beneficiary's competitive bid processes. In addition, the Beneficiary did not have adequate controls or procedures in place to ensure that representatives or consultants of its service providers did not participate in the competitive process for the requested services.

Effect

The monetary effect of this finding is \$529,147. This amount represents the total amount disbursed for the following FRNs:

| FRN | Amount |
|--------------|------------------|
| 41446 | \$142,290 |
| 63145 | \$8,160 |
| 64723 | \$28,517 |
| 68296 | \$350,180 |
| Total | \$529,147 |

Recommendation

IAD recommends that USAC seek recovery of \$529,147. The Beneficiary must implement controls and procedures to ensure compliance with the Rules governing the competitive bidding process, including ensuring that universal service support does not disadvantage one provider over another or unfairly favor or disfavor one technology over another.

Beneficiary Response

The Iowa Rural Health Telecommunications Program (IRHTP) through its Project Coordinator, has reviewed the FCC rules cited, the background information provided, and the conclusions, effect and recommendation by the USAC auditors regarding Service Provider Involvement in IRHTP's Competitive Bidding Processes and its purported effect on competitive bidding and competitive bidding results. IRHTP does not agree that the facts and circumstances presented involve any selective sharing of information that tainted the competitive bidding process, created any undue competitive advantage to any particular vendors, or skewed a competitive bidding result as to any of the contracts listed above. As discussed herein, the circumstances as presented by the USAC auditors further do not rise to the level of an infraction that should result in USAC Management seeking recoupment of RFP [sic] funding under those contracts, as the findings propose.

As a threshold matter, none of the FCC rules cited by the USAC auditors provide notice that the particular firewall that IRHTP put into place consistent with the FCC's competitive bidding rules was insufficient or failed to provide adequate insulation from any potential for bid manipulation by program vendors. While FCC orders adopting the rules discuss the need to keep potential vendors at arm's length during the RFP formulation and vendor selection process, that is what IRHTP did. The FCC rules, combined with these orders, simply do not provide notice that IRHTP's practical, good faith application of that arm's length requirement would be reviewed after the fact and found to be insufficient. Without adequate notice of the specific firewalls that USAC – or ultimately the FCC – would and would not deem sufficient, this after the fact second guessing of the mechanisms used by IRHTP is highly problematic on a basic procedural fairness level. This is particularly true as IRHTP in fact

disclosed all of its dealings with potential vendors to USAC as part of its FCC Form 465 applications for funding, including identification of the parties involved in each RPF's formulation. Having this information, USAC never before raised any issue as to how IRHTP went about its competitive bidding process or questioned any of the vendor selection results prior to funding them. As a result, it would be arbitrary and inequitable for USAC Management to now seek recoupment of funding in this case, as the very disclosure requirements USAC cites and that IRHTP complied with are for the purpose of USAC review of competitive bidding to discover possible improprieties and to deal with them *prior* to providing funding.

Specific Corrections or Clarification with respect to the Conditions:

1. There were two competing bids for the quality assurance inspection services portion of USAC RFP#02. These bids were closely scored with a lower price being the most heavily weighted of the determinative factors. (See Art Spies memo, dated September 16, 2009, showing the cumulative score of 94 for Adesta and 97.7 for AIS) [copy provided to USAC management]. The attached affidavit of Art Spies [copy provided to USAC management] discusses in detail how the RFP#02 was developed, who reviewed the bids received and how the IRHTP Steering Committee members voted in evaluating the competing bids. This affidavit demonstrates that there was a firewall that prevented the winning bidder from participating in the RFP formulation or the award process.

2 USAC RFP #05 included a section for a small project to add quality assurance services for up to five sites that were not included in USAC RFP#02 due to several additional rural hospital members joining after RFP#02 was bid. These additional sites were required to be competitively bid in a separate contract rather than simply added to the services of the existing bid RFP#02. The circumstances of the drafting of the quality assurance portion of RFP#05 are detailed in the attached Arts Spies' affidavit [copy provided to USAC management]. IRHTP believes that due to the very limited scope of this additional work, the limited number of sites that were spread out across the state with more than 240 miles between each of them, and the limited compensation associated with any award, there was only a single bidder, AIS. The fact that only a single bid for quality assurance for those five sites was received under those circumstances is not surprising [*sic*]. Further, [*sic*] the cost of providing this service under USAC RPF #05 was at the same cost per site as USAC RFP#02. If there had been any insider knowledge or unfair competition or desire to circumvent the purposes of the competitive bidding process, then the AIS bid could have come in higher for these additional sites than those

in USAC RFP #02. The fact is that these additional site services were provided at the same cost-effective level. (Art Spies memo, June 21, 2012 showing same cost for addition of four sites as original bid) [copy provided to USAC management].

3 As the USAC auditors note, IRHTP received only one bid for USAC RFP#04, which was for recurring connectivity service or circuit fees, at each participating and eligible rural health care provider location. This bid was from the Iowa Communications Network (ICN), a fiber optic network owned, managed and operated by the State of Iowa by the Iowa Telecommunications [sic] and Technology Commission (ITTC). The bid was to provide IRHTP member rural hospitals with Ethernet connectivity of up to 1GB to all 88 points listed on the RFP using "existing link-segments that emanate from the HCP's owned Alcatel-Lucent 7210 edge switch along the constructed [sic] hospital owned fiber link or a leased "IRU" to a point currently located in an ICN Point of Presence." (USAC RFP#04). While theoretically [sic] it would have been possible for potential communications service providers serving different communities within Iowa to collaborate and join together and bid to provide connectivity service to these 88 points located all throughout the state, the fact is that only one entity, the publicly owned Iowa Communications Network, had built and already was operating a statewide publicly owned fiber optic network. ICN's legal charter permits it to provide connectivity only to authorized users under the Iowa Code: these authorized users include schools, hospitals, state and federal government, National Guard armories, and libraries. ICN's rates for this service are published and known to any service provider or potential service provider in Iowa. These facts were not highlighted and apparently not considered by the USAC auditors and these facts are consistent with what occurred when IRHTP bid the contract for connectivity for 88 participating rural hospitals throughout the state; namely that ICN was uniquely in the best position to provide this service, not because of anything IRHTP did or did not do with respect to competitive bidding, but because of its state charter, published rates and its unmatched fiber network reach. Further, ICN was already providing these circuits to 53 participating hospitals as of May 2012 without program support for the circuits, making ICN the obvious party to seek to continue to provide and expand that service. No other entity responded to the RFP, apparently because no other entity or group of entities believed themselves to be in a position to provide rural broadband connections where the IRHTP specified they were needed for participating rural hospitals throughout Iowa at a rate lower than the published rate that ICN offered in its bid response. Attributing culpability [sic] to IRHTP for the lack of competitive bidders for RFP #04 when IRHTP had nothing whatsoever to do with ICN's unique status and market position in Iowa would be entirely arbitrary.

IRHTP has demonstrated that no employee of ICN was involved in drafting, reviewing or evaluating RFP#04. The fact is that IRHTP did not have the technical ability within its project management staff to draft RFP#04. Recognizing that, IRHTP turned to Tony Crandell of AIS to do the initial drafting of that RFP. Art Spies of IHA on behalf of the IRHTP reviewed the draft and the Steering Committee approved awarding the bid to the ICN. (See minutes from May 29, 2012 Steering Committee meeting) [copy provided to USAC management]. It is not contested that IRHTP, in its Form 465 to USAC, disclosed the fact that Tony Crandell of AIS had assisted in drafting the RFP. It is also a fact that USAC did not at the time or at any time afterwards question or investigate the disclosure as potentially problematic.

The Federal Communications Commission has not prohibited stated owned and operated systems from offering highly publicly beneficial broadband services, although Iowa is apparently one of the few states that has built out a statewide facility for the public safety and health benefits it can confer on the citizens of the state. By law, there is a state agency charged with running the ICN, and that state agency publishes the rates for service for this purpose. Those rates are the rates ICN provided to IRHTP in responding to RFP#04 and those rates would have been known in advance by any other potential bidder for circuit connectivity services. The ICN, as an agency of the state, was simply following its legal charter in providing an RFP response to IRHTP. The ICN plainly is not a typical commercial "vendor." To the extent that there was any commercial vendor interested and available to provide comparable circuit connectivity services at 88 different sites throughout the state of Iowa, it or they could have responded to the RFP. ICN was the only provider who responded. To mechanically apply broad brush "rules" and infer some competitive advantage was conferred on ICN by IRHTP's use of Tony Crandell of AIS as a limited purpose consultant for technical assistance on this single RFP is simply unfounded speculation that ignores the unique non[-]commercial nature of the ICN and the high likelihood it would be the only bidder to provide Ethernet connectivity to its backbone network at 88 different locations throughout the state. Whatever "inside" knowledge one might surmise ICN had about IRHTP's project would have come through its earlier work with IRHTP documentation for the FCC Pilot program, not through information theoretically [sic] provided by Tony Crandell. Further, ICN uniquely knew the technical requirements of its own infrastructure, and that use of the backbone infrastructure of ICN was expressly approved by the FCC in its grant of the Pilot program application. Tony Crandell was a part time hourly project management consultant to ICN with duties unrelated to the IRHTP and Mr. Crandell was not an employee of ICN. Mr. Crandell's company AIS has other

clients. Tony Crandell also performed what IRHTP viewed to be an entirely unrelated one time technical project for IRHTP in drafting RFP#04 at IRHTP's direction and under its supervision.

4. There were no contracts not subject to FCC competitive bidding processes and there were no special arrangements or specific or even general understandings with IRHTP or AIS or ICN as to how the RFPs that the USAC auditors reviewed were structured, what pricing would be preferred, or as to any other matter in the subject RFPs whatsoever. Neither AIS nor ICN personnel participated in the preparation of the RFPs that they were awarded, and neither reviewed or assessed their own or other party's bids. IRHTP did not discourage any potential bidders on any RFP, nor did it divulge additional information to any potential RFP bidder. How the USAC auditors can find under the circumstances that a competitive bidding advantage was conferred on any party, when IRHTP followed the FCC rules and created a firewall it believed in good faith was sufficient is not explained. As noted above, if there was a vendor that would come into the circuit fee RFP#04 bidding process with any potential advantage, it would be the ICN. But that would only be because the ICN was sufficiently built out so as to have a fiber optic network point of presence in each county in the entire state of Iowa and ICN had published rates that other potential bidders could review and conclude on their own as to whether they stood any reasonable chance of prevailing in a competitive bidding situation in which the FCC has directed that cost efficiency is to be the most heavily weighted factor in an award assessment. As a practical matter, the ICN "market" advantage certainly would affect whether other entities determine it would be worthwhile to compete against the state for this contract. But that is not any reason to determine that IRHTP failed to follow the FCC's competitive bidding rules.

The USAC auditors create undue inferences from the fact that ICN's engagement with IRHTP in its pilot program application having to do with its statewide backbone operations and in some unrelated competitive bidding assistance for other RFPs conferred unfair competitive bidding advantages on ICN. However, the USAC auditors failed to consider the unique nature of the state owned ICN. ICN was and is the only entity that has built out broadband fiber to all 99 counties in Iowa. While no entity was prevented or impeded from providing a competitive bid for circuit fee services, the reasonable inference from the fact that only ICN bid is not because it had some unfair insider network design or other informational advantage that chilled potential competition in bidding. Rather, it was uniquely situated to provide the Ethernet connectivity the rural Iowa hospitals banded together to seek as IRHTP. USAC Management should not adopt the inference that IRHTP tampered with the circuit fees bidding

process; IRTHP [*sic*] did not. Certainly prior to seeking any recoupment from IRHTP of the funds paid in support of the contracts, USAC should be required to do far more than merely offer an inference when there are other far more likely explanations for the lack of bidders for last mile circuit fee connectivity contract. There is no evidence of bid rigging, manipulation, or fraud or abuse. Only if they could be established would there be any possible grounds for seeking any recoupment.

5. Tony Crandell of AIS and Dave Swanson of ICN each have extensive knowledge and experience with utilizing the Iowa Communications Network to provide broadband connections and services to authorized entities throughout the state. Each person possessed this knowledge well before implementation of the FCC's Rural Health Pilot Program or IRHTP's bidding processes to participate in the Pilot Program. Simply because these individuals assisted IRHTP at points along the way with parts of the project that did not involve them in a bidding vendor capacity does not prove that they had any special knowledge of IRHTP's plans or that any purported special knowledge of IRHTP's plans skewed competitive bidding in any way. IRHTP's plan was contained in its FCC Pilot program application, it was a matter of public record any potential bidder could have consulted. IRHTP has at all times been transparent with USAC in disclosing its relationships with everyone involved in the program in any way. USAC Management is asked to consider all and not selective aspects of these circumstances when reviewing these audit findings.

IRHTP's other comments in response to the USAC auditor findings:

- As described in the attached affidavit [copy provided to USAC management], IRHTP had a firewall to prevent potential vendors from participating in the development of RFPs, the review of bids, and making the various awards. While the USAC auditors suggest that the firewall IRHTP used was inadequate to prevent tainting of the competitive bidding process, all the auditors can point to as purported proof of their assertion is a lack of competitive bids, a situation that can readily and more obviously be explained by the nature of the ICN statewide, state owned network itself, not anything IRHTP might purportedly have done to suppress [*sic*] or skew potential competition.
- At all the times in question IRHTP had procedures in place to prevent any unfair advantage to any potential bidder, including AIS and ICN. The ICN and AIS personnel also were aware of the prohibition from including potential bidders from the RFP drafting and review process from the beginning of the project due to their experience in public

bidding. As a state-owned entity, ICN itself is also subject to competitive bidding requirements for its projects, so it would not have expected to play a different role in this case. This is reflected in documentation provided to USAC and the USAC internal auditors. (See disclosure materials provided) [copy provided to USAC management].

- As required by USAC, for each RFP, IRHTP disclosed those individuals and entities that participated in the development of each RFP, those persons or companies involved in the bid review process, and those responsible for making any award determination. Through each of the competitive bidding processes and the FCC Form 466 award process, no USAC reviewer ever raised issues regarding supposed inappropriate service provider involvement in any part of the competitive bidding process. As USAC auditors note, the whole point of the FCC disclosure requirement is to allow for USAC review of any potentially improper influences prior to the award of funding. IRHTP should have some reasonable right to rely upon USAC to timely notify it of any perceived concerns so that they could be handled in a less draconian fashion than seeking after the fact recoupment when the case for unfair competitive bidding has yet to be made as opposed to merely being asserted and relying solely on unproven inferences. To attempt to recoup funding after the fact, USAC would have to prove its case rather than rely on unproven inferences as well as demonstrate that the FCC's rules and published requirements plainly prohibited the fully disclosed relationships discussed in the USAC audit findings.
- IRHTP's application for FCC Rural Health Care Pilot Program funding plainly and prominently indicated the project was a joint effort of IRHTP, the ICN as statewide fiber optic backbone provider and a consortium of Iowa, Nebraska and South Dakota rural and urban hospitals. The application indicated the IRHTP network would be built using the ICN backbone network infrastructure. There was no other similar infrastructure available from any other vendor.
- Importantly, at the time of the FCC Pilot program application in May of 2007, IRHTP was not seeking circuit fee service funding; that only became possible to [sic] due to subsequent changes in the program [sic]. However, at all times IRHTP was following program requirements to seek the least cost means of providing the supported rural broadband capability to rural hospitals. Thus, the FCC and the public had a record of what IRHTP had done with ICN previously.